

Committee of Thirteen Report

January 8, 2008

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, January 8, 2008 2007 at 6:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

13 JPs Present: Brown, Glass, Harrison, Hill, Hobbs, Hubbard, Moore, Stephenson, Summers, Williams, Winscott, Wolf, Wozniak

Others Present: County Judge Gary Black, Travis Harp, Richard McComas, Jim Ecker, Dennis Cottrell, Jeff Hawkins

Media: Evie Blad– Daily Record, Scarlet Simms – Morning News

Chair Tim Summers called the meeting to order.

PUBLIC COMMENTS:

Tanya Lewis repeated an earlier account of an encounter with an environmental officer, because she said other accounts are not being told accurately.

Tommy Lewis stated that the environmental officer mentioned in his wife's account was not invited onto their property.

Sue Elverston stated that she was appalled by Mr. Ecker's comment in an earlier meeting that he cannot define what constitutes an environmental issue.

Tom Mills stated that he does not see a need for rural building inspections, especially when no other counties in the state have inspections, and there are too many restrictions on landowners and builders already.

Andy Yeager, Beaver Lake Volunteer Fire Department Chief, stated that the \$20,000 difference in revenue produced by the inspections and the cost to run the department was the best money ever spent by the Quorum Court. He said buildings previously constructed out in the county were often not up to code, and related an instance in which a home was nearly destroyed by a defective fireplace which would not have incurred had inspections been in place when the home was constructed. He said he has heard that former Justice of the Peace Bill Adams plans to run for County Judge and if elected plans to get rid of the building inspectors and fire the Fire Marshall. He said that with the growth in Benton County, we cannot afford to not have inspections.

Jerry Easley stated that every time you have to do anything on a farm, like dig a water line or electric line or build a barn, you have to have an inspection, and farmers already have enough expenses. He said that all of the builders he knows are bonded and insured, so they should know what they are doing.

Diane Gately stated that she is speaking for her children and grandchildren in favor of continuing the inspection program to provide safe structures to live in. She said they did not move out into the county to escape any sort of code or rules, and were appalled to learn that none were required, but were fortunate to have hired a more than ethical builder. She stated that she attended several meetings during the time that the inspection process and fees were adopted, and she remembers the consensus being that the fee structure would be re-evaluated after a period of time to determine whether it was adequate or not.

Bob Kossieck spoke against the formation of the Regional Mobility Authority because he has researched the state statutes dealing with RMAs, and has concerns about the make up of the Board of Directors, because they could be un-elected people, they are not paid, but have the power of condemnation; they cannot be taxed or sued, and there is no oversight authority. He added that he does not think it is needed, and that cities like Rogers are doing a good job of providing a road structure, because the traffic seems to be getting easier to get around in. He suggested that the JPs read all of the two dozen state statutes dealing with regional mobility authorities.

Tim Janacek stated that the inspections are for basic code enforcement, and if all builders would do their jobs and build according to code, they would not be necessary. He said some of the inspectors do not have as much knowledge as an experienced builder, but if they are treated fairly they will understand what the builder is trying to do.

Tim Sorey stated that without oversight, there will always be those who do not follow rules, whether by ignorance or intent, and while it is not his desire to make the process any more cumbersome than it needs to be, they have to have a mechanism in place to ensure that certain requirements are fulfilled.

Steve Marquess stated that many older public buildings in the county were not inspected by anyone, and were built by inferior subcontractors. He said that unfortunately, there will always be people out there who will cut corners, and he thinks it is great that Benton County is finally doing inspections because there is so much urbanization occurring. He suggested that some accommodations might be needed to provide relief for the farmers.

Bill Kneebone stated that building inspections and permits are the only way to ensure that residents of rural Benton County are getting a safe, quality home, and asked how many departments in the county pay their own way.

Heath Ward stated that the county is growing, and with that growth comes the need for rules and regulations, such as speed limits, and doing away with the code enforcement department would be similar to doing away with the Sheriff's department. He said the codes are minimal standards, and perhaps the issue of funding should be revisited. He added that if everyone followed the rules they could reduce the size of government by millions of dollars, but there will always be a small percentage of people who will not follow the rules if no one is watching them.

Wayne Whitehead stated that he is all in favor of rules, but the number of contractors in Northwest Arkansas had tripled in the last 5 years, and licensing requirements for contractors in Arkansas are ridiculous. He said that he does not agree with having inspections, and if people would look more carefully at the contractors they hire and the quality of work they do they would not be needed.

Don Day stated that when the inspection process was started, it was with the stipulation that it not become a burden on taxpayers, so they should remove building inspections from the

Planning Department, and suggested requiring inspections only for commercial or multi-family homes.

Char Cross stated that she has worked with the county building inspectors for the last 2 ½ years while building her home, and while she was not happy when told that she would be required to pay for a permit, she now feels it was the best money she ever spent. She said the inspectors shared their knowledge with her, found many safety issues, and were great to work with.

Mike Seay stated that he has developed two subdivisions in the county, and wanted to voice his approval of permit and inspection department, because it is vital to the growth and development in the county. He said that the fee structure may need to be looked at, but overall the inspection department is doing a great job, and his buyers are getting assurance that they are buying a quality home.

NEW BUSINESS:

JP Summers introduced Deputy Prosecuting Attorney Stephanie McLemore, serving as legal counsel in the absence of County Attorney Robin Green.

1. Ordinance Request: Regional Mobility Authority

JP Wolf stated that Mike Malone and Scott Van Laningham of the Northwest Arkansas Council have met with County Judge Gary Black and Washington County Judge Jerry Hutton, and at the recommendation of Northwest Arkansas Regional Planning Director Jeff Hawkins have modified the agreement to address some concerns about the agreement. She said that County Attorney Robin Green has approved the revisions. JP Glass made motion to forward an ordinance request to the January 24, 2008 Quorum Court agenda, seconded by JP Moore.

JP Wolf stated that she realizes that the words “authority”, “enforce”, and “regulate” can cause concern for some members of the court, but she would remind them that it also means they have a right to be at the table and to have a say in the actions of the authority when they are part of it.

Mike Malone was recognized and stated that what they are seeing tonight is a better agreement and better ordinance, and addresses some questions and concerns that were expressed during the earlier discussions. He said that Mr. Kossieck was correct in his statement that the cities are doing a good job in stepping up and providing city streets, but the RMA is designed to provide the tools to build regional highways to connect the various cities and counties.

JP Wolf noted that the RMA is not designed to replace state and federal funding, but to supplement it. Mike Malone stated that the ordinance and the state statute upon which it is based clearly states that.

JP Hobbs stated that she thinks the authority is a good idea, but one of the sponsors of the bill told her that the devil is in the details, so they need to be sure that they have it right before they enter the agreement. She asked what would happen if one of the minimum required 5 members decides to withdraw. Mike Malone stated that the entity would not dissolve, but they need 5 members to continue to meet as a board, and with 15 eligible members he does not foresee that happening, and noted that withdrawals are covered in Article 13 of the agreement.

JP Hobbs asked what the 4 projects previously mentioned were. Mike Malone listed the Bella Vista bypass, a Springdale northern bypass, a western beltway, and upgrades to 540 as possible projects for the authority.

Mike Malone explained that any funding request will have to be referred to the voters by the Quorum Courts of both counties. JP Stephenson asked how a project could be funded through

tolls. Mike Malone stated that the Highway Department has the authority to enact tolls, but counties do not, and voters can be asked to approve bonded indebtedness backed by tolls. JP Stephenson asked if there are any other sources of funding available. Mike Malone stated that the voters can be asked to approve a vehicle registration fee, but the limit on each vehicle is \$5.00, which would not generate enough money to pay for any of the projects mentioned.

JP Williams stated for clarification that any funding source involving the taxpayers of Benton and Washington Counties will have to come before the respective Quorum Courts before it can be taken to the voters, and the RMA has no mechanism to go directly to the voters. Mike Malone stated that is correct.

JP Winscott stated this is an issue that deserves very serious thought, and asked if once the board is established, would it ever expire or would it be in place for eternity. Mike Malone stated that it could be dissolved by a vote of the board. JP Winscott asked if the Quorum Court can withdraw Benton County's membership. Mike Malone stated that Article 13 states that members are allowed to withdraw, but if there is bonded indebtedness, the minimum membership requirement of 5 must be maintained until that indebtedness is retired. He said that the reason for that is that an entity would never be able to sell bonds without the assurance that it would remain solvent until the bonds are paid off. JP Winscott asked if the only way the agency could raise money would be to obtain voter approval. Mike Malone stated that voters must approve sales taxes, tolls, and vehicle registration fees. He said the RMA could receive funds through federal or state grants and highway funds. JP Winscott asked if the board could solicit money independently through banks or insurance agencies without coming back to the voters, such as in the case of building a toll road and funding it through banks. Mike Malone stated that there are some clear prohibitions in the state law that limit private equity investment in long term projects, and repeated that the authority may only sell bonds to build toll roads with voter approval.

JP Harrison asked what mechanism is in place to enforce the prohibition against anyone having any business interest in any of the projects from serving on the RMA board, and asked who is responsible for researching the board members. Mike Malone stated that the RMA board will adopt bylaws as their rules for operation, and spell that out, but the agreement is very clear that that is not allowed. He said that if the RMA board came to the Quorum Court with a request to go to the voters for funding, he is confident that if they do not have proper rules in place, the Quorum Court would not allow them to proceed. He added that the board members are either mayors or their appointees, and are very closely tied to the will of the voters, because they only serve at the pleasure of the mayor or county judge who appointed them and may be removed at any time, unlike a Highway Commissioner who is appointed for 10 years, or a 6-year term that rolls on even if the appointing elected official is voted out of office.

NWA Regional Planning Director Jeff Hawkins was recognized and stated that his organization is encouraging the county to enter into the agreement, because the time is right due to the recent legislative changes. He added that there is always room for improvement in any legislation, but he believes that this is a good agreement that they have before them. JP Moore asked if there was a consensus of agreement with the cities in both Benton and Washington counties. Jeff Hawkins stated that the agreement has not been before the governing bodies of the cities, but there were representatives of several first and second class cities at a recent regional planning meeting who are all potential members. He said that the legislation sets a minimum number of members, but not a maximum, which might need to be addressed at a later date, and noted that

any city can be a member, but the governing board is limited to representatives of first-class cities only.

JP Stephenson had a question concerning the structure of a sentence in Article 10, Section C explaining who is prohibited from doing business with the RMA, and asked that it be made clear before the ordinance goes to the Quorum Court. Scott Van Laningham was recognized and stated that this is the language that is used by the Northwest Arkansas Regional Airport Authority, and the Northwest Arkansas Council is urging the RMA to use the same language. He said that he would check with the attorneys and make sure it says what they intend it to say.

JP Williams stated that although the agreement gives the RMA the power of eminent domain, would a project not have to get voter approval prior to any action being taken. Scott Van Laningham stated that for the Bella Vista project and Springdale bypass it is likely that the State Highway Department will obtain the rights-of-way. He stated that the RMA will be a public entity, and these will be public projects, and the state law is very clear that eminent domain may only be used for public purposes.

Scott Van Laningham stated that he was not present when Benton and Washington Counties formed the Regional Airport Authority, but he is aware that there was some trepidation, as there usually is when travelling in uncharted waters. He said that he wanted to point out that the Airport Authority has worked well, has represented the region well, and has developed an excellent facility.

JP Summers stated that a project such as the Bella Vista bypass, which is estimated to cost approximately \$225 million, would have a tremendous positive impact on the local economy in terms of payroll and new development. Mike Malone stated that no economic impact study has been done on this particular project, but the accepted formula is that every \$1 billion dollars invested in new highway construction yields about 45,000 jobs, which translates to over 10,000 jobs from this project.

JP Wolf left the meeting.

JP Summers stated that although there is no legal requirement for a public hearing on this issue, they will hold a public forum at 5:00 p.m. on January 24, 2008, and if the court so desires, the ordinance will have its first reading at the Quorum Court meeting later that evening. JP Glass requested clarification of the difference in “any interest” and “substantial interest” mentioned in Article 10, Section C before the ordinance has its first reading. JP Summers stated that they would have that question clarified prior to the Quorum Court meeting.

Motion passed 10 yeas, 2 opposed (Hill, Winscott)

2. Ordinance Request: 2008 Budget Adjustments

Comptroller Richard McComas explained that two appropriations from 2007, the War Eagle grant funds, and the Sheriff’s SO&VC Task Force grant, were not spent in 2007 so they will need to be carried over into the 2008 Budget. He said two other items were inadvertently left out of the original budget, (a 4% increase in Professional Services in the County Health Department and a \$2,000 request from the Rural Development Authority) and will also need to be added to the 2008 Budget.

JP Harrison made motion to forward an ordinance request to the January 24, 2008 Quorum Court agenda, seconded by JP Hobbs.

Motion passed by unanimous show of hands vote.

3. Ordinance Request: Special Election to Levy Annual Dues for NEBCO Volunteer Fire Department

JP Glass stated that the NEBCO Volunteer Fire Department is asking for an election to determine the question of an increase in the dues that are annually added to the property tax statements. JP Glass made motion to forward an ordinance to the January 24, 2008 Quorum Court agenda, seconded by JP Harrison. Motion passed by unanimous show of hands vote.

4. Planning Department Permit and Inspection Fees

JP Hubbard stated that when the permit and inspection process was adopted, it was on the condition that the department be self-funded, and that has not happened. He said there was a \$12,000 shortfall the first year, and despite a reduction in staff and other expenses, it has yet to pay for itself. He said that most people seem to be in favor of the inspections, but they have to look at the cost. He said that a new fee schedule was unanimously rejected by the Finance Committee, and he agrees that agricultural functions should be excluded from permit fees, but that will lead to an even bigger shortfall.

JP Hubbard stated that he would like to eliminate funding for the building inspection department. JP Wozniak stated that no department in the county completely covers its own costs, and the inspections are needed to ensure public safety.

JP Moore stated that they worked with the previous director to establish the fee schedule, and the reason they decided on this particular schedule was because it was simple and expedient to adopt, and was done so with the understanding that after a period of time had passed they could adjust it if necessary to more accurately reflect the type of building being done in the county. He said that everyone agrees that inspections save lives, and he has always favored a different schedule for agricultural and accessory buildings. He added that perhaps they could consider eliminating additional positions until the demand goes back up.

JP Glass stated that eliminating the department altogether would be a step backwards, but he would favor analyzing the fee structure because commercial and residential buildings should be treated differently. He noted that as the size of the unincorporated area continues to decline, there should be some discussion with the cities about who should bear the cost of inspections in areas that are scheduled to be annexed in the near future.

JP Stephenson stated that he favored looking at converting from a schedule based on square footage to one based on valuation, which is what municipalities in the area use. He said he does not care whether or not we are the only county in the state performing inspections, it speaks well of Benton County that we are doing them.

JP Winscott stated that he is not in favor of doing away with the department, because without enforcement, there would be no compliance. He noted that all Department Heads should be held accountable and stay within their budgets.

JP Hubbard stated that they have to look at the money, and his constituents complain about having to get a permit to add on to their hay barns or to replace a meter on their chicken houses, and it is very hard to get an inspector, and electrician and the electric company all out there when it needs to be done in a matter of hours, and one thing he will push for is to exclude all agricultural activities. He noted that without that revenue, will they have to raise the cost of

other permits even more, or should they just give the department its total budget out of the General Fund. He said one solution would be to empower the cities to inspect within their planning zones, which would alter the number of houses in the unincorporated area to the point that it might not even be feasible to staff the inspection department. He said he would like for Ashley Pope to come back before the committee to discuss this again, and noted that houses built in the county prior to 2005 were not inspected.

JP Glass stated that they should consider changing the permit fee structure for agriculture, and perhaps look at the limitations of what the county can afford to provide as far as inspections.

JP Hobbs stated that the fee structure definitely needs to be revisited, and suggested that the Finance Committee could explore with Ashley Pope some other ways to offer protection to residents. She stated that perhaps all buildings did not need to be inspected; that they could do random inspections and provide a list of reputable builders who passed the inspections. She also said they should look at whether the private inspectors that people can hire are offering the same service for less cost.

County Judge Gary Black was recognized, and stated that he does not remember the discussions regarding the implementation of inspections as being centered on the condition that the department be self-funded. He said the consensus was that they would look at the fees after some time had passed to see if they needed to be adjusted, and noted that there is no charge for any agricultural inspections.

JP Summers stated that he would like for a group of people including several JPs, Planning Board members, and Planning Director Ashley Pope to examine the current inspection and permit fee schedule, and asked that they have a recommendation for the Committee of Thirteen in March. JP Stephenson made motion that an ad hoc committee be formed consisting of JP Glass, JP Hubbard, JP Williams, Planning Board members Bill Kneebone, Tim Sorey, and Heath Ward, and Planning Director Ashley Pope, and that they bring their recommendations to the Committee of Thirteen no later than March, seconded by JP Hubbard.

5. Quarterly Road Report

JP Glass stated that he requested a discussion regarding the format and what information would be included in the report, and had requested that Travis Harp be involved in the discussion. County Judge Gary Black stated that Travis Harp had been called away from the meeting due to a family emergency, and they would have the report for the January Quorum Court meeting.

OTHER BUSINESS:

Comptroller Richard McComas stated that the Heating and Air Conditioning Unit at the County Health Department building has gone completely out and has to be replaced at a cost of approximately \$13,000, and will require a budget adjustment. JP Hill made motion for approval to include the cost of the unit in the 2007 budget adjustment ordinance, seconded by JP Hobbs. Motion passed by unanimous show of hands vote.

ANNOUNCEMENTS:

JP Moore announced that the Long Range Planning/Properties & Equipment Committee will meet Tuesday, January 15, 2008 at 5:30 p.m.

PUBLIC COMMENTS:

Bob Kossieck stated that banks require inspections before they will grant a loan, so the county inspection department serves no purpose and the county needs to save money. He said that concerning the Regional Mobility Authority, what you see is what they want you to see, and if board members serve without being paid, there must be some motivation. He said the projects will be funded with bonded debt secured with another county tax or tolls.

Sue Elverson said that the fee schedule should be looked at, and she personally feels there is a need to have building inspections, although it is certainly easier to build a home without one. She said that concerning the RMA, she is still trying to understand why there is a need for it, and thanked the JPs for the good job they do

Joel Jones stated that he has a problem with building inspection being part of county government because he should be able to build anything he wants on his own property and not ask the government for a permit. He said that independent inspectors have to do a good job because their reputations depend on it, but a county employee does not have to worry about doing a good job.

Jerry Easley stated that cities have a 5-mile radius on their inspections, so he sees no need to double up and have the county doing inspections too.

Don Day asked if the Environmental Department would be abiding by the Article 6 exemptions in the unsanitary conditions ordinance. He said while many people have had good experiences with building inspectors, he can relate just as many bad ones. He also asked that the Committee of Thirteen adopt the 6-day rule for agenda items which is used for the Quorum Court agenda.

James Gately stated that they should remember the Fire Chief who spoke earlier, because he sees the end result of the lack of building inspections, and that they heard from 4 members of the Planning Board who say the inspections are needed. He added that one of the main functions of county government is public health and safety, and there is nothing else more important on which to spend county dollars.

After motion and second the meeting was adjourned at 8:15 p.m.